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17 *Attorneys for Defendant/Counterclaimant HYPHY MUSIC, INC.*

18
19 UNITED STATES DISTRICT COURT
20 EASTERN DISTRICT OF CALIFORNIA

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| 21 22 23 24 25 26 27 28 | 21 YELLOWCAKE, INC., California 22 corporation, 23 Plaintiff, 24 v. 25 HYPHY MUSIC, INC., 26 Defendant. | 21 Case No.: 1:20-cv-00988-JLT-BAM 22 [Assigned to the Hon. Jennifer L. Thurston] 23 HYPHY MUSIC, INC.'S SEPARATE 24 STATEMENT OF UNDISPUTED FACTS 25 IN OPPOSITION TO YELLOWCAKE, 26 INC., AND COLONIZE MEDIA, INC.'S 27 MOTION FOR SUMMARY JUDGMENT 28 AND SUMMARY ADJUDICATION |
| | 21 HYPHY MUSIC, INC., 22 Counterclaimant, 23 v. 24 YELLOWCAKE, INC.; COLONIZE 25 MEDIA, INC; JOSE DAVID 26 HERNANDEZ; and JESUS 27 CHAVEZ SR, 28 Counter-Defendants. | 21 Date: September 29, 2023 22 Time: 9:00 a.m. 23 Dept.: Courtroom 4 (7 th Floor) 24 2500 Tulare Street 25 Fresno, CA 93721 26 Judge: Hon. Jennifer L. Thurston |

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MEMORANDUM OF POINTS AND AUTHORITIES

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3 Pursuant to Federal Rule of Civil Procedure 56 and Eastern District of

4 California Local Rule 260, Defendant Hyphy Music, Inc. (“*Hyphy*”) hereby

5 responds to the Separate Statement of Undisputed Facts submitted by Plaintiff

6 Yellowcake, Inc. (“*Yellowcake*”), and Counter-Defendants Yellowcake, Colonize

7 Media, Inc. (“*Colonize*”), and Jose David Hernandez (“*Hernandez*”) (collectively,

8 “*Counter-Defendants*”), in support of their Motion for Summary Judgment filed on

9 or about July 14, 2023 (the “*Motion*”).

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| | Plaintiff/Counterdefendants , | Evidence in Support of Plaintiff/ Counterdefendants , | Defendant’s Response and Supporting Evidence |
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| 1 | Jesus Chavez Sr. (“ <i>Chavez</i> ”) is the founder of the band Los Originales de San Juan (the “ <i>Band</i> ”). | Dkt. 46-2 , ¶ 3-4. | Disputed. Jesus Chavez Sr. (“ <i>Chavez</i> ”) was the lead singer and co-equal member of the Spanish-language musical group Los Originales De San Juan (the “ <i>Group</i> ”), which operated as an unincorporated partnership comprised of Chavez and fellow band members Domingo Torres Flores (“ <i>Flores</i> ”) and Alfonso Vargas (“ <i>Vargas</i> ”). Begakis Decl. at ¶ 11, Exhibit “Q” thereto, Deposition Transcript of Alfonso Vargas (“ <i>Vargas Depo</i> ”) at 17:16-19, 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 12, Exhibit “R” thereto, Deposition Transcript of Domingo Torres Flores (“ <i>Flores Depo</i> ”) at 47:15-25, 48:19-23, 82:13-15, 82:22-83:2, 83:4-13, 85:25- |

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| 1 | 2 | Chavez was always the bandleader, principal performer, principal songwriter of the Band. | Dkt. 46-2 , ¶ 3-4. | 86:11, 86:13-21; Begakis Decl. at ¶ 13, Exhibit "S" thereto, Jesus Chavez, Sr. Deposition, Volume I ("Chavez Depo I") at 18:16-19:3, 20:8-16, 21:16-19, 25:13-14; Begakis Decl. at ¶ 14, Exhibit "T" thereto, Jesus Chavez, Sr. Deposition, Volume II ("Chavez Depo II") at 16:22-17:5, 20:20-21:16, 26:13-20, 31:8-16, 33:18-34:1, 38:8-18, 41:13-42:2. |
| 3 | 3 | Chavez owned all intellectual property produced by the Band including all copyrights in its sound recordings and trademarks. | Dkt. 46-2 , ¶ 3-4. | Disputed. Chavez was the lead singer and co-equal member of the Group, which operated as an unincorporated partnership comprised of Chavez and fellow band members Flores and Vargas. Begakis Decl. at ¶ 11, Exhibit "Q" thereto, Vargas Depo at 17:16-19, 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 12, Exhibit "R" thereto, Flores Depo at 47:15-25, 48:19-23, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21; Begakis Decl. at ¶ 13, Exhibit "S" thereto, Chavez Depo I at 18:16-19:3, 20:8-16, 21:16-19, 25:13-14; Begakis Decl. at ¶ 14, Exhibit "T" thereto, Chavez Depo II at 16:22-17:5, 20:20-21:16, 26:13-20, 31:8-16, 33:18-34:1, 38:8-18, 41:13-42:2. |
| 28 | 27 | | | Disputed. Flores and Vargas were plainly joint authors of the sound recording albums at issue in this dispute (the "Albums"), as evidenced by the facts that they: (a) along with Chavez, were equally credited as "Los Originales De San Juan"; (b) shared equally in all profits generated by the Group and |

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were granted equal access to inspect all records related to the Group's receipt of profits; and (c) were equally involved in all Group activities. Additionally, no paperwork exists to establish that Flores and Vargas are anything other than co-equal, co-controlling members of the Group, and at no point has Chavez ever obtained signed written agreements granting Chavez all rights in the respective Albums from Flores, Vargas, or any other third party who may have creatively contributed to the creation and/or production thereof.

Begakis Decl. at ¶ 11, Exhibit "Q" thereto, Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 12, Exhibit "R" thereto, Flores Depo at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21; Begakis Decl. at ¶ 13, Exhibit "S" thereto, Chavez Depo I at 18:23-19:3; Begakis Decl. at ¶ 14, Exhibit "T" thereto, Chavez Depo II at 20:20-21:16, 26:13-20, 31:8-16, 33:18-34:1, 38:8-18, 41:13-42:2.

4 2013 and 2015, Chavez, recording under the moniker Los Originales de San Juan, recorded six albums titled: (i) *Los Originales de San Juan- "El Campesino"*; (ii) *Los Originales de San Juan- "Corridos de Poca M"*; (iii) *Los Originales de San Juan- "En Vivo Desde La Cantina de Mi Barrio"*; (iv) *Los Originales de San Juan- "Nuestra Historia En*

[Dkt. 46-2](#), ¶ 7

Disputed, to the extent that Chavez was merely the lead singer, and a co-equal member of, the Group, which operated as an unincorporated partnership comprised of Chavez and fellow band members Flores and Vargas, who themselves were plainly joint authors of the Albums based on their contributions to the recording of such Albums.

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| 1 2 3 4 5 6 7 8 9 10 11 12 | <p><i>Vivo</i>"; (v) <i>Los Originales de San Juan-</i> "<i>Amigos y Contrarios</i>"; and (vi) <i>Los Originales de San Juan-</i> "<i>Naci Con Suerte de Rey Con Mariachi</i>" (collectively "Albums").</p> | | <p>Declaration of Jose Martinez ("Martinez Decl.") at ¶ 4; Begakis Decl. at ¶ 11, Exhibit "Q" thereto, Vargas Depo at 17:16-19, 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 12, Exhibit "R" thereto, Flores Depo at 47:15-25, 48:19-23, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21; Begakis Decl. at ¶ 13, Exhibit "S" thereto, Chavez Depo I at 18:16-19:3, 20:8-16, 21:16-19, 25:13-14; Begakis Decl. at ¶ 14, Exhibit "T" thereto, Chavez Depo II at 16:22-17:5, 20:20-21:16, 26:13-20, 31:8-16, 33:18-34:1, 38:8-18, 41:13-42:2.</p> |
| 13 14 | <p>5 Hector Omar Rosales ("Rosales") acted as the audio engineer for four (4) of the Albums recorded in his studio.</p> | <p>Rosales Dec. Dkt. 46-1, ¶ 5; Chavez Dec Dkt. 46-2, ¶ 11.</p> | <p>Undisputed.</p> |
| 15 16 17 18 19 20 21 22 23 24 25 26 27 28 | <p>6 Chavez was the sole producer of the Albums and no employee or anybody else affiliated with Morena produced any songs on the Albums or provided any original creative input into the recording of the Albums.</p> | <p>Rosales Dec. Dkt. 46-1, ¶ 9; Chavez Dec. Dkt. 46-2, ¶ 8.</p> | <p>Disputed. Hyphy closely collaborated with the Group to produce the Albums. For the first three (of five) Albums, Hyphy: (a) helped determine the "theme" and overall creative direction of each Album; (b) crucially selected the songs to be included in each Album; (c) selected the recording studio and paid for all costs associated with the recording of each Album; (d) hired the sound engineer; (e) paid the Group a substantial mount for recording the Albums; and (f) Oversaw and generally supervised the recording and production of each Album. For the final two (of five) Albums (which are each comprised of recordings from a previous</p> |

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| | | | <p>live performance by the Group), Hyphy also: (a) selected and paid for the venue of the live performance; (b) selected the songs to be performed at the live performance (and then recorded for the Albums); (c) directly employed, supervised, and directed the services of the sound engineer and videographer who each recorded the audio and video of the live performance, respectively; (d) wrote a script for the history of the Group as presented as part of the Group's live performance, and hired an "MC"/commentator who narrated the script; and (e) re-recorded portions of the guitarist's contributions to the live performance afterwards using a new guitarist selected, hired and paid for by Hyphy.</p> <p>Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit "N" thereto, Deposition Transcript of Jose Martinez ("Martinez Depo") at 75:6-76:25, 83:11-84:22, 84:24-85:8, 85:14-86:16.</p> |
| 7 | At no time during their recording or subsequent existence were there any other co-owners of the Copyrighted sound recordings in the albums besides Chavez. | Chavez Decl. Dkt. 46-2 , ¶¶ 8-19. | Disputed. Flores and Vargas were plainly joint authors of the Albums, as evidenced by the facts that they: (a) along with Chavez, were equally credited as "Los Originales De San Juan"; (b) shared equally in all profits generated by the Group and were granted equal access to inspect all records related to the Group's receipt of profits; and (c) were equally involved in all Group activities. Additionally, no |

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| | | | <p>paperwork exists to establish that Flores and Vargas are anything other than co-equal, co-controlling members of the Group, and at no point has Chavez ever obtained signed written agreements granting Chavez all rights in the respective Albums from Flores, Vargas, or any other third party who may have creatively contributed to the creation and/or production thereof. Disputed. Hyphy closely collaborated with the Group to produce the Albums. For the first three (of five) Albums, Hyphy: (a) helped determine the “theme” and overall creative direction of each Album; (b) crucially selected the songs to be included in each Album; (c) selected the recording studio and paid for all costs associated with the recording of each Album; (d) hired the sound engineer; (e) paid the Group a substantial mount for recording the Albums; and (f) Oversaw and generally supervised the recording and production of each Album. For the final two (of five) Albums (which are each comprised of recordings from a previous live performance by the Group), Hyphy also: (a) selected and paid for the venue of the live performance; (b) selected the songs to be performed at the live performance (and then recorded for the Albums); (c) directly employed, supervised, and directed the services of the sound engineer and videographer who each recorded the audio and</p> |
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| 1 | | 1-5. | Martinez Depo at 75:6-76:25, 83:11-84:22, 84:24-85:8, 85:14-86:1. |
| 2 | 10 | Moreover, Hyphy claimed on multiple occasions that it had allegedly “commissioned” Chavez, <i>and Chavez alone</i> , to record the Albums. | <p>Hyphy’s Counterclaims, Dkt. 7, ¶ 16;</p> <p>Hyphy’s Amended Counterclaims, Dkt. 15, ¶ 16;</p> <p>Defendant’s Opposition to Plaintiff-Counterdefendants’ Motion to Dismiss Defendant-Counterclaimant’s Counterclaims Dkt. 27, Pg. 1, Ln. 27-Pg. 2, Ln. 5;</p> <p>Hyphy’s Reply to Counterdefendants’ Challenge to The Validity of Certain Copyright Registrations Dkt. 45, Pg. 1, Lns. 16-18; Declaration of Jose Martinez in Support of Reply</p> |

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| 1 | with to distribute the 2 Albums. | | 3 exchange for valuable 4 consideration paid to the 5 Group by Hyphy through 6 Chavez. 7 Martinez Decl. at ¶ 3, 8; 8 Begakis Decl. at ¶ 8, 9 Exhibit "N" thereto, 10 Martinez Depo at 75:6- 11 76:25, 83:11-84:22, 84:24- 12 85:8, 85:14-86:1. |
| 1 3 | Plaintiff Yellowcake, Inc. ("Yellowcake") is primarily engaged in the business of exploiting various intellectual property rights. | Kevin Berger Declaration, ¶ 2 | Undisputed. |
| 1 4 | Colonize is a company engaged in the business of digital music distribution and distributes the Albums on behalf of Yellowcake. | Berger Dec., ¶ 13 | Disputed. Yellowcake utilizes Counter-Defendant Colonize as its "distribution arm" to release and exploit rights acquired by Yellowcake, but for all intents and purposes Yellowcake and Colonize operated – and continue to operate – as one single economic entity, with common ownership, common business operations, common office space, common staff, and many other common resources. Begakis Decl. at ¶ 10, Exhibit "P" thereto, Hernandez Depo I at 80:3- 20. |
| 1 5 | Counter-defendant Jose David Hernandez ("Hernandez") is a principal of Colonize. | Hernandez Dec., ¶ 1. | Undisputed. |
| 1 6 | On or about March 21, 2019, Yellowcake and Chavez entered into an Asset Purchase and Assignment Agreement ("APA Agreement"), whereby Yellowcake purchased Chavez's entire ownership of the rights, title and interests in the sound recordings which comprised the works of Los Originales | Berger Dec., ¶ 9. | Disputed. After Counter- Defendant Hernandez approached and convinced Chavez, without Hyphy or the rest of the Group's knowledge, to assign the Albums to Yellowcake in exchange for payment of \$500,000, Chavez and Yellowcake codified their purported agreement via an "Asset Purchase and |

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| 1 | De San Juan, including the Albums. | | Assignment Agreement executed on or about March 21, 2019 (the “Asset Purchase Agreement”). Although Section 13.e. of the Asset Purchase Agreement sets forth Chavez’s purported representation and warranty to Yellowcake that Chavez “was the only owner of” the Albums with “good and marketable title” thereto, Chavez never obtained signed written agreements granting Chavez all rights in the respective Albums from Flores, Vargas, or any other third party who may have creatively contributed to the creation and/or production thereof. |
| 12 | | | Martinez Decl. at ¶ 5; Begakis Decl. at ¶ 7, Exhibit “M” thereto, Plaintiff/Counter- Defendant’s Document Production (PLF000021- PLF000039); Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 26:2-12; Begakis Decl. at ¶ 10, Exhibit “P” thereto, Hernandez Depo I at 51:9- 11, 107:4-20, 116:18- 117:14, 148:24-149:5; Begakis Decl. at ¶ 14, Exhibit “T” thereto, Chavez Depo II at 77:13-17, 79:7-9, 79:17-80:2, 81:7-16. |
| 21 | 1 7 In the APA, Chavez represented that he owned all rights transferred to Yellowcake therein. | Berman Dec. <u>Exh.</u> “B” ¶ 13(e). | Undisputed. |
| 23 | 1 8 Prior to entering into the APA, Yellowcake did due diligence and searched the United States Copyright Office (“USCO”) to determine whether there were any potential competing copyright registrations filed for the | Berger Dec., ¶¶ 7-8 | Disputed. Yellowcake did not conduct any due diligence with the respect to the Albums or the transaction contemplated by the Asset Purchase Agreement. Begakis Decl. at ¶ 10; |

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| 1 | Albums and found none, <i>because there were none.</i> | | Exhibit "P" thereto, Hernandez Depo I at 109:22-110:11. |
| 2 9 | Following its execution of the APA Agreement, Yellowcake complied with all requirements set forth by the Copyright Act, 17 U.S.C. § 101, <i>et seq.</i> , by registering copyrights for each sound recording acquired by the APA Agreement in addition to recording the APA with the USCO. | Dkt. 1 , Exh. "A" | Disputed. Although the Asset Purchase Agreement contains Chavez's purported representation and warranty that he was "the only owner of" the Albums with "good marketable title" thereto, Chavez never obtained signed written agreements granting him all rights in the respective Albums from Flores, Vargas, or any other third party who may have creatively contributed to the creation and/or production thereof. |
| 11 12 13 14 15 16 17 | | | Begakis Decl. at ¶ 6, Exhibit "L" thereto, Yellowcake Interrogatory Responses at pp. 4-5; Begakis Decl. at ¶ 7, Exhibit "M" thereto, Yellowcake Responses to Request for Production at p. 4; Begakis Decl. at ¶ 7, Exhibit "M" thereto, Plaintiff/Counter-Defendant's Document Production (PLF00024). |
| 18 19 20 | Sometime after execution of the APA Agreement and the issuance of the copyright registrations by the USCO, Yellowcake learned that Morena had been distributing copies of songs on the Albums and created and/or uploaded videos containing unauthorized derivative works of songs on the Albums to www.YouTube.com when Colonize found that YouTube was reporting "conflicts" between Yellowcake and Morena because both were distributing videos with the same sound recordings on | Complaint, Dkt. 1 , Exh. "A", ¶ 1. Berger Decl. at ¶ 18. | Disputed. Neither Yellowcake nor any of the other Counter-Defendants could have "learned" (i.e., obtained information for the first time) that Hyphy had been distributing the Albums when "Colonize found that YouTube was reporting 'conflicts'" because Hernandez, an owner and executive of both Yellowcake and Colonize: (a) had known about Chavez since he was a child; and (b) had been working with Chavez through Yellowcake and Colonize since 2016. |

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| 1 | the Albums. | | Begakis Decl. at ¶ 10, Exhibit "P" thereto, Hernandez Depo I at 134:2-25; Begakis Decl. at ¶ 14, Exhibit "T" thereto, Chavez Depo II at 62:3-6. |
| 2 | 1 This Court already took judicial notice of Yellowcake's copyright registrations in the Albums in its prior Order dated March 1, 2021. | Dkt. 42 , Pg. 5, fn. 1. | Undisputed. |
| 2 | 2 Shortly thereafter, in or about June 2020, Yellowcake filed "Takedown Notices" pursuant to 17 U.S.C. § 512 <i>et seq.</i> through YouTube claiming ownership of the songs and notified Hyphy's distributor, The Orchard, that Hyphy was infringing Yellowcake's copyrighted Albums. | Berman Dec. <u>Exh. "C".</u> | Undisputed. |
| 2 | 3 Hyphy completely disregarded these notices and continued to exploit the copyrighted Albums, including but not limited to selling and streaming them on multiple digital service providers like Spotify, Apple Music, iTunes and Amazon Music, even after Yellowcake filed this lawsuit. As such, Yellowcake was required under 17 U.S.C. § 512 et seq. and YouTube's protocols to file this action | Hyphy's royalty reports extending to 2022 annexed to Berman Dec. as <u>Exh. "D".</u> | Disputed. Yellowcake does not own exclusive rights in and to the Albums because Yellowcake did not acquire exclusive rights from Chavez when Yellowcake and Chavez entered into the Asset Purchase Agreement. Begakis Decl. at ¶ 7, Exhibit "M" thereto, Plaintiff/Counterdefendant's Document Production (PLF000024); Begakis Decl. at ¶ 14, Exhibit "T" thereto, Chavez Depo II at 22:20-23:3, 23:11-15. |

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| 1 | to protect its rights and 2 prevent further conflicts 3 with the digital service 4 providers. | | |
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| 2 4 | Hyphy admitted to receiving the following gross amounts for the exploitation of each Album: (i) <i>“El Campesino,”</i> – approximately \$20,000; (ii) <i>Des de la Cantina de Mi Barrio,</i> – approximately \$20,000; (iii) <i>“Nuestra Historia en Vivo,”</i> – approximately \$20,000; (iv) <i>“Corridos de Poca M,”</i> – approximately \$20,000; (v) <i>“Amigos y Contrarios”</i> – approximately \$20,000; and (vi) <i>“Naci Con Suerte de Rey (Mariachi)”</i> – approximately \$20,000. | 9 | 10 |
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HYPHY'S ADDITIONAL UNDISPUTED MATERIAL FACTS

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2 **I. YELLOWCAKE IS NOT THE ALBUMS' SOLE OWNER**

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| <u>Hyphy's Undisputed Material Facts and Supporting Evidence</u> | <u>Counter-Defendants' Response and Supporting Evidence</u> |
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| <p>1. Hyphy is a record label in the business of collaborating with recording artists to produce, distribute, and otherwise exploit sound and audiovisual recordings by such artists, coupled with artwork.</p> <p>11 Declaration of John Begakis (<i>Begakis Decl.</i>) at ¶ 8, Exhibit "N" thereto, Jose Martinez Deposition Transcript (<i>Martinez Depo</i>) at 13:6-14:6.</p> | |
| <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>2. Counter-Defendant Jesus Chavez Sr. (<i>Chavez</i>) is the lead singer of the Spanish-language musical group Los Originales De San Juan (the <i>Group</i>).</p> <p>Begakis Decl. at ¶ 13, Exhibit "S" thereto, Jesus Chavez, Sr. Deposition, Volume I (<i>Chavez Depo I</i>) at 25:13-14; Begakis Decl. at ¶ 14, Exhibit "T" thereto, Jesus Chavez, Sr. Deposition, Volume II (<i>Chavez Depo II</i>) at 16:22-17:5.</p> | |
| <p>3. The Group operates as a co-equal partnership comprised of Chavez, accordion player Domingo Torres Flores (<i>Flores</i>), and drummer Alfonso Vargas (<i>Vargas</i>).</p> <p>Begakis Decl. at ¶ 11, Exhibit "Q" thereto, Deposition Transcript of Alfonso</p> | |

| <u>1</u> <u>2</u> <u>3</u> <u>4</u> <u>5</u> <u>6</u> <u>7</u> <u>8</u> <u>9</u> <u>10</u> <u>11</u> <u>12</u> <u>13</u> <u>14</u> <u>15</u> <u>16</u> <u>17</u> <u>18</u> <u>19</u> <u>20</u> <u>21</u> <u>22</u> <u>23</u> <u>24</u> <u>25</u> <u>26</u> <u>27</u> <u>28</u> <u>Hyphy's Undisputed Material Facts</u> <u>and Supporting Evidence</u> | <u>Counter-Defendants' Response and</u> <u>Supporting Evidence</u> |
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| <p>Vargas (“<i>Vargas Depo</i>”) at 17:16-19, 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 12, Exhibit “R” thereto, Deposition Transcript of Domingo Torres Flores (“<i>Flores Depo</i>”) at 47:15-25, 48:19-23, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21; Begakis Decl. at ¶ 13, Exhibit “S” thereto, Chavez Depo I at 18:16-19:3, 20:8-16, 21:16-19; Begakis Decl. at ¶ 14, Exhibit “T” thereto, Chavez Depo II at 20:20-21:16, 26:13-20, 31:8-16, 33:18-34:1, 38:8-18, 41:13-42:2.</p> | |
| <p>4. In or about February 2013, Hyphy and the Group began working together to co-create various sound recordings to be embodied on multiple albums, which the parties had orally agreed were to be owned by Hyphy (the “<i>Agreement</i>”).</p> | |
| <p>Declaration of Jose Martinez (“<i>Martinez Decl.</i>”) at ¶ 3; Begakis Decl. at ¶ 13, Exhibit “S” thereto, Chavez Depo I at 34:7-11; Begakis Decl. at ¶ 14, Exhibit “T” thereto, Chavez Depo II at 19:14-17, 32:16-20, 35:12-21.</p> | |
| <p>5. The albums created pursuant to the Agreement were entitled (1) “Amigos y Contrarios”; (2) “Corridos de Poca M”;(3) “El Campesino”; (4) “Desde La Cantina de Mi Barrio (En Vivo)”; and (5) “Nuestra Historia (En Vivo)” (collectively, the “Los Originales Albums” or “Albums”).</p> | |

| <u>1</u> <u>Hyphy's Undisputed Material Facts</u> <u>2</u> <u>and Supporting Evidence</u> | <u>Counter-Defendants' Response and</u> <u>Supporting Evidence</u> |
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| <u>3</u> <u>Martinez Decl. at ¶ 6; Begakis Decl. at ¶</u> <u>4</u> <u>8, Exhibit "N" thereto, Martinez Depo at</u> <u>5</u> <u>44:7-23, 51:22-25.</u> | |
| <u>6</u> <u>6. One of the other two albums</u> <u>7</u> <u>identified in Yellowcake's</u> <u>8</u> <u>Complaint, entitled "Chuy Chavez y</u> <u>9</u> <u>Sus Amigos," has no connection to</u> <u>this dispute and wasn't even</u> <u>recorded by Chavez.</u> | |
| <u>10</u> <u>Martinez Decl. at ¶ 6; Begakis Decl. at ¶</u> <u>11</u> <u>8, Exhibit "N" thereto, Martinez Depo at</u> <u>12</u> <u>44:24:-9, 154:11-155:25.</u> | |
| <u>13</u> <u>7. Though this Agreement was not</u> <u>14</u> <u>initially memorialized in writing,</u> <u>15</u> <u>Flores and Vargas understood that</u> <u>16</u> <u>such Agreement existed, and</u> <u>17</u> <u>therefore intended that all rights in</u> <u>18</u> <u>and to their recording services, and</u> <u>19</u> <u>the five Albums produced under the</u> <u>20</u> <u>Agreement and pursuant to such</u> <u>21</u> <u>services, be conveyed to Hyphy.</u> | |
| <u>22</u> <u>Martinez Decl. at ¶ 7. Declaration of</u> <u>23</u> <u>Domingo Torres Flores ("Flores Decl.")</u> <u>24</u> <u>at ¶¶ 3-5; Declaration of Alfonso Vargas</u> <u>25</u> <u>("Vargas Decl.") at ¶¶ 3-5</u> | |
| <u>26</u> <u>8. Flores and Vargas later confirmed</u> <u>27</u> <u>their belief and intent to convey all</u> <u>28</u> <u>rights in the Albums to Hyphy by</u> <u>executing enforceable Copyright</u> <u>Assignment Agreements on or</u> <u>about March 22, 2022 (collectively</u> <u>the "Assignments").</u> | |
| <u>29</u> <u>Martinez Decl. at ¶ 7, Exhibit "D"</u> | |

| <u>Hyphy's Undisputed Material Facts and Supporting Evidence</u> | <u>Counter-Defendants' Response and Supporting Evidence</u> |
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| thereto. | |
| 9. Unlike larger record labels, however, Hyphy closely collaborated with the Group to create the Albums. | |
| Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit "N" thereto, Martinez Depo at 75:6-76:25, 83:11-84:22, 84:24-85:8, 85:14-86:16. | |
| 10. For the first three (of five) of the Los Originales Albums, Hyphy helped determine the "theme and overall creative direction of each Album. | |
| Martinez Decl. at ¶ 8. | |
| 11. For the first three (of five) of the Los Originales Albums, Hyphy crucially selected the songs to be included in each Album. | |
| Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit "N" thereto, Martinez Depo at 83:11-84:22. | |
| 12. For the first three (of five) of the Los Originales Albums, Hyphy selected the recording studio, and paid for all costs associated with the recording of each Album. | |
| Martinez Decl. at ¶ 8. | |
| 13. For the first three (of five) of the Los Originales Albums, Hyphy hired the sound engineer. | |
| Martinez Decl. at ¶ 8; Begakis Decl. at ¶ | |

| <u>1</u> <u>Hyphy's Undisputed Material Facts</u> <u>2</u> <u>and Supporting Evidence</u> | <u>Counter-Defendants' Response and</u> <u>Supporting Evidence</u> |
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| 8, Exhibit "N" thereto, Martinez Depo at 59:21-60:7, 61:10-16. | |
| 14. For the first three (of five) of the Los Originales Albums, Hyphy paid the Group a substantial amount to record the Albums. | |
| Martinez Decl. at ¶ 8. | |
| 15. For the first three (of five) of the Los Originales Albums, Hyphy oversaw and generally supervised the recording and production of each Album. | |
| Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit "N" thereto, Martinez Depo at 85:14-86:16. | |
| 16. For the final two (of five) of the Los Originales Albums, Hyphy also selected and paid for the venue of the live performance. | |
| Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit "N" thereto, Martinez Depo at 75:6-25. | |
| 17. For the final two (of five) of the Los Originales Albums, Hyphy also selected the songs to be performed at the live performance (which were recorded and subsequently included in the Albums). | |
| Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit "N" thereto, Martinez Depo at 75:6-25. | |
| 18. For the final two (of five) of the Los Originales Albums, Hyphy also | |

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| <p>directly employed, supervised, and directed the services of the sound engineer and videographer who each recorded the audio and video of the live performance.</p> <p>Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit "N" thereto, Martinez Depo at 75:6-25.</p> | |
| <p>19. For the final two (of five) of the Los Originales Albums, Hyphy also wrote a script for the history of the Group as presented as part of the live performance, and hired an "MC"/commentator who narrated the script.</p> <p>Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit "N" thereto, Martinez Depo at 75:6-25.</p> | |
| <p>20. For the final two (of five) of the Los Originales Albums, Hyphy also re-recorded portions of the guitarist's contributions to the live performance afterwards, using a new guitarist selected, hired and paid for by Hyphy.</p> <p>Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit "N" thereto, Martinez Depo at 75:6-25.</p> | |
| <p>21. It should also be noted here that Flores and Vargas were plainly joint authors of the Albums because they were equally involved in all activities of the Band, which existed as an unincorporated partnership in</p> | |

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| <p>which all Band members were joint owners, participants and contributors.</p> <p>Begakis Decl. at ¶ 11, Exhibit “Q” thereto, Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 12, Exhibit “R” thereto, Flores Depo at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21; Begakis Decl. at ¶ 13, Exhibit “S” thereto, Chavez Depo I at 18:23-19:3.</p> | |
| <p>22. It should also be noted here that Flores and Vargas were plainly joint authors of the Albums because they were equally credited on all Albums in which each of them made contributions.</p> | |
| <p><i>See</i> Begakis Decl. at ¶ 11, Exhibit “Q” thereto, Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 12, Exhibit “R” thereto, Flores Depo at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21.</p> | |
| <p>23. It should also be noted here that Flores and Vargas were plainly joint authors of the Albums because they shared equally in all profits of the Band, and were granted equal access to inspect all records related to the Band’s receipt of all such profits.</p> | |
| <p>Begakis Decl. at ¶ 11, Exhibit “Q”</p> | |

| <u>Hyphy's Undisputed Material Facts and Supporting Evidence</u> | <u>Counter-Defendants' Response and Supporting Evidence</u> |
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| <p>thereto, Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 12, Exhibit “R” thereto, Flores Depo at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21; Begakis Decl. at ¶ 14, Exhibit “T” thereto, Chavez Depo II at 20:20-21:16, 26:13-20, 31:8-16, 33:18-34:1, 38:8-18, 41:13-42:2.</p> | |
| <p>24. Indeed, Flores and Vargas’s co-equal status in the Group is how the Group is known to the public because, for example, none of the individual members of the Group – including Chavez – are individually identified on the Group’s “biography” page located at the website https://www.AllMusic.com (the “Website”). Furthermore, the Group’s “credits” page on the Website indicates that the credited “Artist” on all albums produced by the Group is “Los Originales De San Juan.”</p> <p>Martinez Decl. at ¶ 18.</p> | |
| <p>25. In addition to its original creative contributions to the production, recording and overall creation of the Los Originales Albums, Hyphy also designed and created the artwork featured on the cover of each Album (the “Album Artwork”).</p> <p>Martinez Decl. at ¶ 9; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at</p> | |

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| 127:12-21. | |
| 26. Hyphy released the Albums, with the Album Artwork, for distribution through all available digital service providers (“ DSPs ”) between 2013 and 2017. | |
| Martinez Decl. at ¶ 13, Exhibit “H” thereto; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 44:7-23; 51:1 | |

| <p>1 <u>Hyphy's Undisputed Material Facts</u> 2 <u>and Supporting Evidence</u></p> | <p>1 <u>Counter-Defendants' Response and</u> 2 <u>Supporting Evidence</u></p> |
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| <p>3 Hernandez ("Hernandez") is a co- 4 owner of both Yellowcake and 5 Colonize. 6 Begakis Decl. at ¶ 10, Exhibit "P" 7 thereto, Hernandez Depo I at 51:9-11, 8 116:18-117:14, 148:24-149:5; Begakis 9 Decl. at ¶ 14, Exhibit "T" thereto, 10 Chavez Depo II at 77:13-17, 79:7-9, 11 79:17-80:2, 81:7-16.</p> | |
| <p>12 30. In that position, Hernandez has 13 admitted that both corporations 14 have operated – and continue to 15 operate – as a single economic 16 entity, with common ownership, 17 business operations, office space, 18 staff, and many other resources. 19 Begakis Decl. at ¶ 10, Exhibit "P" 20 thereto, Hernandez Depo I at 80:3-20.</p> | |
| <p>21 31. In or about March 2019, Hernandez 22 approached Chavez about selling 23 the Los Originales Albums to 24 Yellowcake. 25 Begakis Decl. at ¶ 10, Exhibit "P" 26 thereto, Hernandez Depo I at 51:9-11, 27 116:18-117:14, 148:24-149:5; Begakis 28 Decl. at ¶ 14, Exhibit "T" thereto, 29 Chavez Depo II at 77:13-17, 79:7-9, 30 79:17-80:2, 81:7-16.</p> | |
| <p>31 32. Hernandez had previously worked 32 with Hyphy and had secretly gained 33 valuable information on Hyphy's 34 business and relationship with 35 Chavez.</p> | |

| <u>Hyphy's Undisputed Material Facts and Supporting Evidence</u> | <u>Counter-Defendants' Response and Supporting Evidence</u> |
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| Martinez Decl. at ¶ 5; Begakis Decl. at ¶ 8, Exhibit "N" thereto, Martinez Depo at 26:2-12. | |
| 33. Hernandez thus knew that Hyphy only had an oral agreement with the Group, and approached and convinced Chavez, without Hyphy or the rest of the Group's knowledge, to assign the Albums to Yellowcake in exchange for payment of \$500,000. | |
| Martinez Decl. at ¶ 5; Begakis Decl. at ¶ 8, Exhibit "N" thereto, Martinez Depo at 26:2-12; Begakis Decl. at ¶ 14, Exhibit "T" thereto, Chavez Depo II at 77:13-17, 79:7-9, 79:17-80:2, 80:5-13, 81:7-16; Begakis Decl. at ¶ 10, Exhibit "P" thereto, Hernandez Depo I at 107:4-20. | |
| 34. Chavez and Yellowcake attempted to codify their purported agreement via an "Asset Purchase and Assignment Agreement" executed on or about March 21, 2019 (the <i>"Asset Purchase Agreement"</i>). | |
| Begakis Decl. at ¶ 7, Exhibit "M" thereto, Plaintiff/Counter-Defendant's Document Production (PLF000021-PLF000039). | |
| 35. In Section 13.e. of the Asset Purchase Agreement, Chavez represented and warranted to Yellowcake that Chavez was "the only owner of" the Albums, and possessed "good and marketable title" thereto at the time of sale. | |

| <u>Hyphy's Undisputed Material Facts and Supporting Evidence</u> | <u>Counter-Defendants' Response and Supporting Evidence</u> |
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| 3 4 5 6 7 8 9 Begakis Decl. at ¶ 7, Exhibit "M" thereto, Plaintiff/Counter-Defendant's Document Production (PLF00024). | |
| 10 11 12 13 36. Chavez never obtained signed written agreements from Flores, Vargas or Hyphy acquiring each party's respective contributions to, and rights in, the Albums and sound recordings embodied thereon. | |
| 14 15 16 17 18 19 Begakis Decl. at ¶ 6, Exhibit "L" thereto, Yellowcake Interrogatory Responses at pp. 4-5; Begakis Decl. at ¶ 7, Exhibit "M" thereto, Yellowcake Responses to Request for Production at p. 4. | |
| 20 21 22 23 24 25 26 27 37. Based on musical contributions alone, Flores and Vargas contributed <i>more</i> to the creation of the Albums than Chavez (who only sang) because they performed the accordion and drums, which are musical elements that are critical to the particular genre of music at issue (especially the accordion). | |
| 28 Martinez Decl. at ¶ 4. | |
| 29 30 31 32 33 34 35 36 37 38. Chavez repeatedly acknowledged Flores and Vargas' valuable contributions to the Albums, which were, in fact, so valuable to Chavez, that Chavez paid Flores royalties for his "[y]ears working for the band," and paid Vargas following Chavez's re-sale of the Works to Yellowcake because "[Vargas] was a good musician..." | |

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| <u>Hyphy's Undisputed Material Facts</u> <u>and Supporting Evidence</u> | <u>Counter-Defendants' Response and</u> <u>Supporting Evidence</u> |
| Martinez Decl. at ¶ 4. | |
| II. <u>YELLOWCAKE DOES NOT HAVE A TENABLE CLAIM FOR</u> <u>COPYRIGHT INFRINGEMENT</u> | |
| <u>Hyphy's Undisputed Material Facts</u> <u>and Supporting Evidence</u> | <u>Counter-Defendants' Response and</u> <u>Supporting Evidence</u> |
| 39. Hyphy is a record label in the business of collaborating with recording artists to produce, distribute, and otherwise exploit sound and audiovisual recordings by such artists, coupled with artwork. | |
| Declaration of John Begakis (“ <i>Begakis Decl.</i> ”) at ¶ 8, Exhibit “N” thereto, Jose Martinez Deposition Transcript (“ <i>Martinez Depo</i> ”) at 13:6-14:6. | |
| 40. Counter-Defendant Jesus Chavez Sr. (“ <i>Chavez</i> ”) is the lead singer of the Spanish-language musical group Los Originales De San Juan (the “ <i>Group</i> ”). | |
| Begakis Decl. at ¶ 13, Exhibit “S” thereto, Jesus Chavez, Sr. Deposition, Volume I (“ <i>Chavez Depo I</i> ”) at 25:13-14; Begakis Decl. at ¶ 14, Exhibit “T” thereto, Jesus Chavez, Sr. Deposition, Volume II (“ <i>Chavez Depo II</i> ”) at 16:22-17:5. | |
| 41. The Group operates as a co-equal | |

| <p>1 <u>Hyphy's Undisputed Material Facts</u> 2 <u>and Supporting Evidence</u></p> | <p><u>Counter-Defendants' Response and</u> <u>Supporting Evidence</u></p> |
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| <p>3 partnership comprised of Chavez, 4 accordion player Domingo Torres 5 Flores (“<i>Flores</i>”), and drummer 6 Alfonso Vargas (“<i>Vargas</i>”).</p> <p>7 Begakis Decl. at ¶ 11, Exhibit “Q” 8 thereto, Deposition Transcript of Alfonso 9 Vargas (“<i>Vargas Depo</i>”) at 17:16-19, 10 27:17-22, 143:7-10, 143:14-16, 143:17- 11 20, 143:25-144:3, 144:4-7; Begakis 12 Decl. at ¶ 12, Exhibit “R” thereto, 13 Deposition Transcript of Domingo 14 Torres Flores (“<i>Flores Depo</i>”) at 47:15- 15 25, 48:19-23, 82:13-15, 82:22-83:2, 16 83:4-13, 85:25-86:11, 86:13-21; Begakis 17 Decl. at ¶ 13, Exhibit “S” thereto, 18 Chavez Depo I at 18:16-19:3, 20:8-16, 19 21:16-19; Begakis Decl. at ¶ 14, Exhibit 20 “T” thereto, Chavez Depo II at 20:20- 21 21:16, 26:13-20, 31:8-16, 33:18-34:1, 38:8-18, 41:13-42:2.</p> | |
| <p>17 42. In or about February 2013, Hyphy 18 and the Group began working 19 together to co-create various sound 20 recordings to be embodied on 21 multiple albums, which the parties had orally agreed were to be owned by Hyphy (the “<i>Agreement</i>”).</p> <p>22 Declaration of Jose Martinez (“<i>Martinez</i> 23 <i>Decl.</i>”) at ¶ 3; Begakis Decl. at ¶ 13, 24 Exhibit “S” thereto, Chavez Depo I at 34:7-11; Begakis Decl. at ¶ 14, Exhibit 25 “T” thereto, Chavez Depo II at 19:14-17, 32:16-20, 35:12-21.</p> | |
| <p>26 43. The albums created pursuant to the 27 Agreement were entitled (1)</p> | |

| 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 10010 10011 10012 10013 10014 10015 10016 10017 10018 10019 10020 10021 10022 10023 10024 10025 10026 10027 10028 10029 10030 10031 10032 10033 10034 10035 10036 10037 10038 10039 10040 10041 10042 10043 10044 10045 10046 10047 10048 10049 10050 10051 10052 10053 10054 10055 10056 10057 10058 10059 10060 10061 10062 10063 10064 10065 10066 10067 10068 10069 10070 10071 10072 10073 10074 10075 10076 10077 10078 10079 10080 10081 10082 10083 10084 10085 10086 10087 10088 10089 10090 10091 10092 10093 10094 10095 10096 10097 10098 10099 100100 100101 100102 100103 100104 100105 100106 100107 100108 100109 100110 100111 100112 100113 100114 100115 100116 100117 100118 100119 100 |
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| <p>1 <u>Hyphy's Undisputed Material Facts</u> 2 <u>and Supporting Evidence</u></p> | <p>1 <u>Counter-Defendants' Response and</u> 2 <u>Supporting Evidence</u></p> |
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| <p>3 rights in the Albums to Hyphy by 4 executing enforceable Copyright 5 Assignment Agreements on or 6 about March 22, 2022 (collectively 7 the “<i>Assignments</i>”). 8 9 Martinez Decl. at ¶ 7, Exhibit “D” 10 thereto.</p> | |
| <p>11 47. Unlike larger record labels, 12 however, Hyphy closely 13 collaborated with the Group to 14 create the Albums. 15 16 Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 17 8, Exhibit “N” thereto, Martinez Depo at 18 75:6-76:25, 83:11-84:22, 84:24-85:8, 19 85:14-86:16.</p> | |
| <p>20 48. For the first three (of five) of the 21 Los Originales Albums, Hyphy 22 helped determine the “theme and 23 overall creative direction of each 24 Album. 25 26 Martinez Decl. at ¶ 8.</p> | |
| <p>27 49. For the first three (of five) of the 28 Los Originales Albums, Hyphy 29 crucially selected the songs to be 30 included in each Album. 31 32 Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 33 8, Exhibit “N” thereto, Martinez Depo at 34 83:11-84:22.</p> | |
| <p>35 50. For the first three (of five) of the 36 Los Originales Albums, Hyphy 37 selected the recording studio, and 38 paid for all costs associated with the 39 recording of each Album.</p> | |

| <u>Hyphy's Undisputed Material Facts and Supporting Evidence</u> | <u>Counter-Defendants' Response and Supporting Evidence</u> |
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| 3 Martinez Decl. at ¶ 8. | |
| 4 5 6 51. For the first three (of five) of the Los Originales Albums, Hyphy hired the sound engineer. | |
| 7 8 Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit "N" thereto, Martinez Depo at 59:21-60:7, 61:10-16. | |
| 9 10 11 52. For the first three (of five) of the Los Originales Albums, Hyphy paid the Group a substantial amount to record the Albums. | |
| 12 Martinez Decl. at ¶ 8. | |
| 13 14 15 16 53. For the first three (of five) of the Los Originales Albums, Hyphy oversaw and generally supervised the recording and production of each Album. | |
| 17 18 Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit "N" thereto, Martinez Depo at 85:14-86:16. | |
| 19 20 21 54. For the final two (of five) of the Los Originales Albums, Hyphy also selected and paid for the venue of the live performance. | |
| 22 23 24 Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 8, Exhibit "N" thereto, Martinez Depo at 75:6-25. | |
| 25 26 27 55. For the final two (of five) of the Los Originales Albums, Hyphy also selected the songs to be performed at the live performance (which were recorded and subsequently include | |

| <p>1 <u>Hyphy's Undisputed Material Facts</u> 2 <u>and Supporting Evidence</u></p> | <p>1 <u>Counter-Defendants' Response and</u> 2 <u>Supporting Evidence</u></p> |
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| <p>3 in the Albums).</p> <p>4 Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 5 8, Exhibit "N" thereto, Martinez Depo at 6 75:6-25.</p> | |
| <p>7 56. For the final two (of five) of the Los 8 Originales Albums, Hyphy also 9 directly employed, supervised, and 10 directed the services of the sound 11 engineer and videographer who 12 each recorded the audio and video 13 of the live performance.</p> <p>14 Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 15 8, Exhibit "N" thereto, Martinez Depo at 16 75:6-25.</p> | |
| <p>17 57. For the final two (of five) of the Los 18 Originales Albums, Hyphy also 19 wrote a script for the history of the 20 Group as presented as part of the 21 live performance, and hired an 22 "MC"/commentator who narrated 23 the script.</p> <p>24 Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 25 8, Exhibit "N" thereto, Martinez Depo at 26 75:6-25.</p> | |
| <p>27 58. For the final two (of five) of the Los 28 Originales Albums, Hyphy also re- 29 recorded portions of the guitarist's 30 contributions to the live 31 performance afterwards, using a 32 new guitarist selected, hired and 33 paid for by Hyphy.</p> <p>34 Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 35 8, Exhibit "N" thereto, Martinez Depo at 36 75:6-25.</p> | |

| <u>1</u> <u>2</u> <u>3</u> <u>4</u> <u>5</u> <u>6</u> <u>7</u> <u>8</u> <u>9</u> <u>10</u> <u>11</u> <u>12</u> <u>13</u> <u>14</u> <u>15</u> <u>16</u> <u>17</u> <u>18</u> <u>19</u> <u>20</u> <u>21</u> <u>22</u> <u>23</u> <u>24</u> <u>25</u> <u>26</u> <u>27</u> <u>28</u> <u>Hyphy's Undisputed Material Facts</u> <u>and Supporting Evidence</u> | <u>Counter-Defendants' Response and</u> <u>Supporting Evidence</u> |
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| 75:6-25. | |
| 59. It should also be noted here that Flores and Vargas were plainly joint authors of the Albums because they were equally involved in all activities of the Band, which existed as an unincorporated partnership in which all Band members were joint owners, participants and contributors. | |
| Begakis Decl. at ¶ 11, Exhibit "Q" thereto, Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 12, Exhibit "R" thereto, Flores Depo at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21; Begakis Decl. at ¶ 13, Exhibit "S" thereto, Chavez Depo I at 18:23-19:3. | |
| 60. It should also be noted here that Flores and Vargas were plainly joint authors of the Albums because they were equally credited on all Albums in which each of them made contributions. | |
| See Begakis Decl. at ¶ 11, Exhibit "Q" thereto, Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 12, Exhibit "R" thereto, Flores Depo at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21. | |
| 61. It should also be noted here that Flores and Vargas were plainly joint authors of the Albums because they | |

| <p>1 <u>Hyphy's Undisputed Material Facts</u> 2 <u>and Supporting Evidence</u></p> | <p>1 <u>Counter-Defendants' Response and</u> 2 <u>Supporting Evidence</u></p> |
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| <p>3 shared equally in all profits of the 4 Band, and were granted equal 5 access to inspect all records related 6 to the Band's receipt of all such 7 profits.</p> <p>8 Begakis Decl. at ¶ 11, Exhibit "Q" 9 thereto, Vargas Depo at 27:17-22, 143:7- 10 143:14-16, 143:17-20, 143:25-144:3, 11 144:4-7; Begakis Decl. at ¶ 12, Exhibit 12 "R" thereto, Flores Depo at 47:15-25, 13 82:13-15, 82:22-83:2, 83:4-13, 85:25- 14 86:11, 86:13-21; Begakis Decl. at ¶ 14, 15 Exhibit "T" thereto, Chavez Depo II at 16 20:20-21:16, 26:13-20, 31:8-16, 33:18- 17 34:1, 38:8-18, 41:13-42:2.</p> | |
| <p>18 62. Indeed, Flores and Vargas's co- 19 equal status in the Group is how the 20 Group is known to the public 21 because, for example, none of the 22 individual members of the Group – 23 including Chavez – are individually 24 identified on the Group's 25 "biography" page located at the 26 website 27 <https://www.AllMusic.com> (the 28 "Website"). Furthermore, the 29 Group's "credits" page on the 30 Website indicates that the credited 31 "Artist" on all albums produced by 32 the Group is "Los Originales De 33 San Juan."</p> <p>34 Martinez Decl. at ¶ 18.</p> | |
| <p>35 63. In addition to its original creative 36 contributions to the production, 37 recording and overall creation of the</p> | |

| <u>1</u> <u>2</u> <u>3</u> <u>4</u> <u>5</u> <u>6</u> <u>7</u> <u>8</u> <u>9</u> <u>10</u> <u>11</u> <u>12</u> <u>13</u> <u>14</u> <u>15</u> <u>16</u> <u>17</u> <u>18</u> <u>19</u> <u>20</u> <u>21</u> <u>22</u> <u>23</u> <u>24</u> <u>25</u> <u>26</u> <u>27</u> <u>28</u> <u>Hyphy's Undisputed Material Facts</u> <u>and Supporting Evidence</u> | <u>Counter-Defendants' Response and</u> <u>Supporting Evidence</u> |
|---|---|
| <p>Los Originales Albums, Hyphy also designed and created the artwork featured on the cover of each Album (the “Album Artwork”).</p> <p>Martinez Decl. at ¶ 9; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 127:12-21.</p> | |
| <p>64. Hyphy released the Albums, with the Album Artwork, for distribution through all available digital service providers (“DSPs”) between 2013 and 2017.</p> | |
| <p>Martinez Decl. at ¶ 13, Exhibit “H” thereto; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 44:7-23; 51:18-25; 67:24-69:5.</p> | |
| <p>65. Thereafter, Hyphy obtained copyright registrations for all of such Album Artwork.</p> <p>Martinez Decl. at ¶ 14, Exhibit “X” thereto; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 133:9-136:5.</p> | |
| <p>66. Plaintiff/Counter-Defendant Yellowcake, Inc. (“Yellowcake”) is a competing record label and distributor of sound recordings, utilizing Counter-Defendant Colonize Media, Inc. (“Colonize”) as its “distribution arm” to release and exploit rights acquired by Yellowcake.</p> | |
| <p>Begakis Decl. at ¶ 9, Exhibit “O”</p> | |

| <u>1</u> <u>2</u> <u>3</u> <u>4</u> <u>5</u> <u>6</u> <u>7</u> <u>8</u> <u>9</u> <u>10</u> <u>11</u> <u>12</u> <u>13</u> <u>14</u> <u>15</u> <u>16</u> <u>17</u> <u>18</u> <u>19</u> <u>20</u> <u>21</u> <u>22</u> <u>23</u> <u>24</u> <u>25</u> <u>26</u> <u>27</u> <u>28</u> <u>Hyphy's Undisputed Material Facts</u> <u>and Supporting Evidence</u> | <u>Counter-Defendants' Response and</u> <u>Supporting Evidence</u> |
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| thereto, Deposition Transcript of Kevin Berger (“ <i>Berger Depo</i> ”) at 91:19-23; Begakis Decl. at ¶ 10, Exhibit “P” thereto, Deposition Transcript of Jose David Hernandez, Volume I (“ <i>Hernandez Depo I</i> ”) at 77:19-21. | |
| 67. Counter-Defendant Jose David Hernandez (“Hernandez”) is a co-owner of both Yellowcake and Colonize. Begakis Decl. at ¶ 10, Exhibit “P” thereto, Hernandez Depo I at 51:9-11, 116:18-117:14, 148:24-149:5; Begakis Decl. at ¶ 14, Exhibit “T” thereto, Chavez Depo II at 77:13-17, 79:7-9, 79:17-80:2, 81:7-16. | |
| 68. In that position, Hernandez has admitted that both corporations have operated – and continue to operate – as a single economic entity, with common ownership, business operations, office space, staff, and many other resources. Begakis Decl. at ¶ 10, Exhibit “P” thereto, Hernandez Depo I at 80:3-20. | |
| 69. In or about March 2019, Hernandez approached Chavez about selling the Los Originales Albums to Yellowcake. Begakis Decl. at ¶ 10, Exhibit “P” thereto, Hernandez Depo I at 51:9-11, 116:18-117:14, 148:24-149:5; Begakis Decl. at ¶ 14, Exhibit “T” thereto, Chavez Depo II at 77:13-17, 79:7-9, | |

| <u>Hyphy's Undisputed Material Facts and Supporting Evidence</u> | <u>Counter-Defendants' Response and Supporting Evidence</u> |
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| 79:17-80:2, 81:7-16. | |
| 70. Hernandez had previously worked with Hyphy and had secretly gained valuable information on Hyphy's business and relationship with Chavez. | |
| 7 Martinez Decl. at ¶ 5; Begakis Decl. at ¶ 8, Exhibit "N" thereto, Martinez Depo at 26:2-12. | |
| 71. Hernandez thus knew that Hyphy only had an oral agreement with the Group, and approached and convinced Chavez, without Hyphy or the rest of the Group's knowledge, to assign the Albums to Yellowcake in exchange for payment of \$500,000. | |
| 15 Martinez Decl. at ¶ 5; Begakis Decl. at ¶ 16 8, Exhibit "N" thereto, Martinez Depo at 17 26:2-12; Begakis Decl. at ¶ 14, Exhibit 18 "T" thereto, Chavez Depo II at 77:13-17, 79:7-9, 79:17-80:2, 80:5-13, 81:7-16; 19 Begakis Decl. at ¶ 10, Exhibit "P" thereto, Hernandez Depo I at 107:4-20. | |
| 20 72. Chavez and Yellowcake attempted 21 to codify their purported agreement 22 via an "Asset Purchase and 23 Assignment Agreement" executed 24 on or about March 21, 2019 (the 25 " <i>Asset Purchase Agreement</i> "). | |
| 26 Begakis Decl. at ¶ 7, Exhibit "M" 27 thereto, Plaintiff/Counter-Defendant's Document Production (PLF000021-PLF000039). | |

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|---|---|
| 73. In Section 13.e. of the Asset Purchase Agreement, Chavez represented and warranted to Yellowcake that Chavez was “the only owner of” the Albums, and possessed “good and marketable title” thereto at the time of sale. 8 Begakis Decl. at ¶ 7, Exhibit “M” thereto, Plaintiff/Counter-Defendant’s Document Production (PLF00024). | |
| 74. Chavez never obtained signed written agreements from Flores, Vargas or Hyphy acquiring each party’s respective contributions to, and rights in, the Albums and sound recordings embodied thereon. 15 Begakis Decl. at ¶ 6, Exhibit “L” thereto, Yellowcake Interrogatory Responses at pp. 4-5; Begakis Decl. at ¶ 7, Exhibit “M” thereto, Yellowcake Responses to Request for Production at p. 4. | |
| 75. Based on musical contributions alone, Flores and Vargas contributed <i>more</i> to the creation of the Albums than Chavez (who only sang) because they performed the accordion and drums, which are musical elements that are critical to the particular genre of music at issue (especially the accordion). 25 Martinez Decl. at ¶ 4. | |
| 76. Chavez repeatedly acknowledged Flores and Vargas’ valuable contributions to the Albums, which | |

| <u>Hyphy's Undisputed Material Facts</u> | <u>Counter-Defendants' Response and</u> |
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| <u>and Supporting Evidence</u> | <u>Supporting Evidence</u> |
| <p>were, in fact, so valuable to Chavez, that Chavez paid Flores royalties for his “[y]ears working for the band,” and paid Vargas following Chavez’s re-sale of the Works to Yellowcake because “[Vargas] was a good musician...”</p> | |
| <p>Martinez Decl. at ¶ 4.</p> | |
| <p>77. Counter-Defendants entirely failed to serve any Initial Disclosures, and the discovery cut-off date has come and gone.</p> | |
| <p>Begakis Decl. at ¶ 3.</p> | |
| <p>78. Yellowcake thus failed to identify any damages beyond the mere categories of damages set out in the Complaint.</p> | |
| <p>Begakis Decl. at ¶¶ 4-5.</p> | |
| <p>79. Hyphy incurred approximately \$124,700 in verifiable costs, but only generated approximately \$104,131 in verifiable revenue – establishing that Hyphy has taken a loss of \$20,569 on the Albums.</p> | |
| <p>Martinez Decl. at ¶¶ 10-12.</p> | |

III. COUNTER-DEFENDANTS INFRINGED HYPHY'S COPYRIGHTS

| <p>1</p> <p>2 <u>Hyphy's Undisputed Material Facts</u></p> <p>3 <u>and Supporting Evidence</u></p> | <p>1</p> <p>2 <u>Counter-Defendants' Response and</u></p> <p>3 <u>Supporting Evidence</u></p> |
|---|---|
| <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p> <p>36</p> <p>37</p> <p>38</p> <p>39</p> <p>40</p> <p>41</p> <p>42</p> <p>43</p> <p>44</p> <p>45</p> <p>46</p> <p>47</p> <p>48</p> <p>49</p> <p>50</p> <p>51</p> <p>52</p> <p>53</p> <p>54</p> <p>55</p> <p>56</p> <p>57</p> <p>58</p> <p>59</p> <p>60</p> <p>61</p> <p>62</p> <p>63</p> <p>64</p> <p>65</p> <p>66</p> <p>67</p> <p>68</p> <p>69</p> <p>70</p> <p>71</p> <p>72</p> <p>73</p> <p>74</p> <p>75</p> <p>76</p> <p>77</p> <p>78</p> <p>79</p> <p>80</p> <p>81</p> <p>82</p> <p>83</p> <p>84</p> <p>85</p> <p>86</p> <p>87</p> <p>88</p> <p>89</p> <p>90</p> <p>91</p> <p>92</p> <p>93</p> <p>94</p> <p>95</p> <p>96</p> <p>97</p> <p>98</p> <p>99</p> <p>100</p> <p>101</p> <p>102</p> <p>103</p> <p>104</p> <p>105</p> <p>106</p> <p>107</p> <p>108</p> <p>109</p> <p>110</p> <p>111</p> <p>112</p> <p>113</p> <p>114</p> <p>115</p> <p>116</p> <p>117</p> <p>118</p> <p>119</p> <p>120</p> <p>121</p> <p>122</p> <p>123</p> <p>124</p> <p>125</p> <p>126</p> <p>127</p> <p>128</p> <p>129</p> <p>130</p> <p>131</p> <p>132</p> <p>133</p> <p>134</p> <p>135</p> <p>136</p> <p>137</p> <p>138</p> <p>139</p> <p>140</p> <p>141</p> <p>142</p> <p>143</p> <p>144</p> <p>145</p> <p>146</p> <p>147</p> <p>148</p> <p>149</p> <p>150</p> <p>151</p> <p>152</p> <p>153</p> <p>154</p> <p>155</p> <p>156</p> <p>157</p> <p>158</p> <p>159</p> <p>160</p> <p>161</p> <p>162</p> <p>163</p> <p>164</p> <p>165</p> <p>166</p> <p>167</p> <p>168</p> <p>169</p> <p>170</p> <p>171</p> <p>172</p> <p>173</p> <p>174</p> <p>175</p> <p>176</p> <p>177</p> <p>178</p> <p>179</p> <p>180</p> <p>181</p> <p>182</p> <p>183</p> <p>184</p> <p>185</p> <p>186</p> <p>187</p> <p>188</p> <p>189</p> <p>190</p> <p>191</p> <p>192</p> <p>193</p> <p>194</p> 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<p>832</p> <p>833</p> <p>834</p> <p>835</p> <p>836</p> <p>837</p> <p>838</p> <p>839</p> <p>840</p> <p>841</p> <p>842</p> <p>843</p> <p>844</p> <p>845</p> <p>846</p> <p>847</p> <p>848</p> <p>849</p> <p>850</p> <p>851</p> <p>852</p> <p>853</p> <p>854</p> <p>855</p> <p>856</p> <p>857</p> <p>858</p> <p>859</p> <p>860</p> <p>861</p> <p>862</p> <p>863</p> <p>864</p> <p>865</p> <p>866</p> <p>867</p> <p>868</p> <p>869</p> <p>870</p> <p>871</p> <p>872</p> <p>873</p> <p>874</p> <p>875</p> <p>876</p> <p>877</p> <p>878</p> <p>879</p> <p>880</p> <p>881</p> <p>882</p> <p>883</p> <p>884</p> <p>885</p> <p>886</p> <p>887</p> <p>888</p> <p>889</p> <p>890</p> <p>891</p> <p>892</p> <p>893</p> <p>894</p> <p>895</p> <p>896</p> <p>897</p> <p>898</p> <p>899</p> <p>900</p> <p>901</p> <p>902</p> <p>903</p> <p>904</p> <p>905</p> <p>906</p> <p>907</p> <p>908</p> <p>909</p> <p>910</p> <p>911</p> <p>912</p> <p>913</p> <p>914</p> <p>915</p> <p>916</p> <p>917</p> <p>918</p> <p>919</p> <p>920</p> <p>921</p> <p>922</p> <p>923</p> <p>924</p> <p>925</p> <p>926</p> <p>927</p> <p>928</p> <p>929</p> <p>930</p> <p>931</p> <p>932</p> <p>933</p> <p>934</p> <p>935</p> <p>936</p> <p>937</p> <p>938</p> <p>939</p> <p>940</p> <p>941</p> <p>942</p> <p>943</p> <p>944</p> <p>945</p> <p>946</p> <p>947</p> <p>948</p> <p>949</p> <p>950</p> <p>951</p> <p>952</p> <p>953</p> <p>954</p> <p>955</p> <p>956</p> <p>957</p> <p>958</p> <p>959</p> <p>960</p> <p>961</p> <p>962</p> <p>963</p> <p>964</p> <p>965</p> <p>966</p> <p>967</p> <p>968</p> <p>969</p> <p>970</p> <p>971</p> <p>972</p> <p>973</p> <p>974</p> <p>975</p> <p>976</p> <p>977</p> <p>978</p> <p>979</p> <p>980</p> <p>981</p> <p>982</p> <p>983</p> <p>984</p> <p>985</p> <p>986</p> <p>987</p> <p>988</p> <p>989</p> <p>990</p> <p>991</p> <p>992</p> <p>993</p> <p>994</p> <p>995</p> <p>996</p> <p>997</p> <p>998</p> <p>999</p> <p>1000</p> | <p>1</p> <p>2 <u>Counter-Defendants' Response and</u></p> <p>3 <u>Supporting Evidence</u></p> |
| <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p> <p>36</p> <p>37</p> <p>38</p> <p>39</p> <p>40</p> <p>41</p> <p>42</p> <p>43</p> <p>44</p> <p>45</p> <p>46</p> <p>47</p> <p>48</p> <p>49</p> <p>50</p> <p>51</p> <p>52</p> <p>53</p> <p>54</p> <p>55</p> <p>56</p> <p>57</p> <p>58</p> <p>59</p> <p>60</p> <p>61</p> <p>62</p> <p>63</p> <p>64</p> <p>65</p> <p>66</p> <p>67</p> <p>68</p> <p>69</p> <p>70</p> <p>71</p> <p>72</p> <p>73</p> <p>74</p> <p>75</p> <p>76</p> <p>77</p> <p>78</p> <p>79</p> <p>80</p> <p>81</p> <p>82</p> <p>83</p> <p>84</p> <p>85</p> <p>86</p> <p>87</p> <p>88</p> <p>89</p> <p>90</p> <p>91</p> <p>92</p> <p>93</p> <p>94</p> <p>95</p> <p>96</p> <p>97</p> <p>98</p> <p>99</p> <p>100</p> <p>101</p> <p>102</p> <p>103</p> <p>104</p> <p>105</p> <p>106</p> <p>107</p> <p>108</p> <p>109</p> <p>110</p> <p>111</p> <p>112</p> <p>113</p> <p>114</p> <p>115</p> <p>116</p> <p>117</p> <p>118</p> <p>119</p> <p>120</p> <p>121</p> <p>122</p> <p>123</p> <p>124</p> <p>125</p> <p>126</p> <p>127</p> <p>128</p> <p>129</p> <p>130</p> <p>131</p> <p>132</p> <p>133</p> <p>134</p> <p>135</p> <p>136</p> <p>137</p> <p>138</p> <p>139</p> <p>140</p> <p>141</p> <p>142</p> <p>143</p> <p>144</p> <p>145</p> <p>146</p> <p>147</p> <p>148</p> <p>149</p> <p>150</p> <p>151</p> <p>152</p> <p>153</p> <p>154</p> <p>155</p> <p>156</p> <p>157</p> <p>158</p> <p>159</p> <p>160</p> <p>161</p> <p>162</p> <p>163</p> <p>164</p> <p>165</p> <p>166</p> <p>167</p> <p>168</p> <p>169</p> <p>170</p> <p>171</p> <p>172</p> <p>173</p> <p>174</p> <p>175</p> <p>176</p> <p>177</p> <p>178</p> <p>179</p> <p>180</p> <p>181</p> <p>182</p> <p>183</p> <p>184</p> <p>185</p> <p>186</p> <p>187</p> <p>188</p> <p>189</p> <p>190</p> <p>191</p> <p>192</p> <p>193</p> <p>194</p> <p>195</p> <p>196</p> <p>197</p> <p>198</p> <p>199</p> <p>200</p> <p>201</p> <p>202</p> <p>203</p> <p>204</p> <p>205</p> <p>206</p> <p>207</p> <p>208</p> <p>209</p> <p>210</p> <p>211</p> <p>212</p> <p>213</p> <p>214</p> <p>215</p> <p>216</p> <p>217</p> <p>218</p> <p>219</p> <p>220</p> <p>221</p> <p>222</p> <p>223</p> <p>224</p> <p>225</p> <p>226</p> <p>227</p> <p>228</p> <p>229</p> <p>230</p> <p>231</p> <p>232</p> <p>233</p> <p>234</p> <p>235</p> <p>236</p> <p>237</p> <p>238</p> <p>239</p> <p>240</p> <p>241</p> <p>242</p> <p>243</p> <p>244</p> <p>245</p> <p>246</p> <p>247</p> <p>248</p> <p>249</p> <p>250</p> <p>251</p> <p>252</p> <p>253</p> <p>254</p> <p>255</p> <p>256</p> <p>257</p> <p>258</p> <p>259</p> <p>260</p> <p>261</p> <p>262</p> <p>263</p> <p>264</p> <p>265</p> <p>266</p> <p>267</p> <p>268</p> <p>269</p> <p>270</p> <p>271</p> <p>272</p> <p>273</p> <p>274</p> <p>275</p> <p>276</p> <p>277</p> <p>278</p> <p>279</p> <p>280</p> <p>281</p> <p>282</p> <p>283</p> <p>284</p> <p>285</p> <p>286</p> <p>287</p> <p>288</p> <p>289</p> <p>290</p> <p>291</p> <p>292</p> <p>293</p> <p>294</p> <p>295</p> <p>296</p> <p>297</p> <p>298</p> <p>299</p> <p>300</p> <p>301</p> <p>302</p> <p>303</p> <p>304</p> <p>305</p> <p>306</p> <p>307</p> <p>308</p> <p>309</p> <p>310</p> <p>311</p> <p>312</p> <p>313</p> <p>314</p> <p>315</p> <p>316</p> <p>317</p> <p>318</p> <p>319</p> <p>320</p> <p>321</p> <p>322</p> <p>323</p> <p>324</p> <p>325</p> <p>326</p> <p>327</p> <p>328</p> <p>329</p> <p>330</p> <p>331</p> <p>332</p> <p>333</p> <p>334</p> <p>335</p> <p>336</p> <p>337</p> <p>338</p> <p>339</p> <p>340</p> <p>341</p> <p>342</p> <p>343</p> <p>344</p> <p>345</p> <p>346</p> <p>347</p> <p>348</p> <p>349</p> <p>350</p> <p>351</p> <p>352</p> <p>353</p> <p>354</p> <p>355</p> <p>356</p> <p>357</p> <p>358</p> <p>359</p> <p>360</p> <p>361</p> <p>362</p> <p>363</p> <p>364</p> <p>365</p> <p>366</p> <p>367</p> <p>368</p> <p>369</p> <p>370</p> <p>371</p> <p>372</p> <p>373</p> <p>374</p> <p>375</p> <p>376</p> <p>377</p> <p>378</p> <p>379</p> <p>380</p> <p>38</p> | |

| <u>Hyphy's Undisputed Material Facts</u> | <u>Counter-Defendants' Response and</u> |
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| <u>and Supporting Evidence</u> | <u>Supporting Evidence</u> |
| <p>Decl. at ¶ 12, Exhibit "R" thereto, Deposition Transcript of Domingo Torres Flores ("<i>Flores Depo</i>") at 47:15-25, 48:19-23, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21; Begakis Decl. at ¶ 13, Exhibit "S" thereto, Chavez Depo I at 18:16-19:3, 20:8-16, 21:16-19; Begakis Decl. at ¶ 14, Exhibit "T" thereto, Chavez Depo II at 20:20-21:16, 26:13-20, 31:8-16, 33:18-34:1, 38:8-18, 41:13-42:2.</p> | |
| <p>83. In or about February 2013, Hyphy and the Group began working together to co-create various sound recordings to be embodied on multiple albums, which the parties had orally agreed were to be owned by Hyphy (the "<i>Agreement</i>").</p> | |
| <p>Declaration of Jose Martinez ("<i>Martinez Decl.</i>") at ¶ 3; Begakis Decl. at ¶ 13, Exhibit "S" thereto, Chavez Depo I at 34:7-11; Begakis Decl. at ¶ 14, Exhibit "T" thereto, Chavez Depo II at 19:14-17, 32:16-20, 35:12-21.</p> | |
| <p>84. The albums created pursuant to the Agreement were entitled (1) "Amigos y Contrarios"; (2) "Corridos de Poca M"; (3) "El Campesino"; (4) "Desde La Cantina de Mi Barrio (En Vivo)"; and (5) "Nuestra Historia (En Vivo)" (collectively, the "Los Originales Albums" or "Albums").</p> | |
| <p>Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 8, Exhibit "N" thereto, Martinez Depo at</p> | |

| <u>Hyphy's Undisputed Material Facts and Supporting Evidence</u> | <u>Counter-Defendants' Response and Supporting Evidence</u> |
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| 44:7-23, 51:22-25. | |
| 85. One of the other two albums identified in Yellowcake's Complaint, entitled "Chuy Chavez y Sus Amigos," has no connection to this dispute and wasn't even recorded by Chavez. | |
| Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 8, Exhibit "N" thereto, Martinez Depo at 44:24:-9, 154:11-155:25. | |
| 86. Though this Agreement was not initially memorialized in writing, Flores and Vargas understood that such Agreement existed, and therefore intended that all rights in and to their recording services, and the five Albums produced under the Agreement and pursuant to such services, be conveyed to Hyphy. | |
| Martinez Decl. at ¶ 7. Declaration of Domingo Torres Flores (" <i>Flores Decl.</i> ") at ¶¶ 3-5; Declaration of Alfonso Vargas (" <i>Vargas Decl.</i> ") at ¶¶ 3-5 | |
| 87. Flores and Vargas later confirmed their belief and intent to convey all rights in the Albums to Hyphy by executing enforceable Copyright Assignment Agreements on or about March 22, 2022 (collectively the " <i>Assignments</i> "). | |
| Martinez Decl. at ¶ 7, Exhibit "D" thereto. | |
| 88. Unlike larger record labels, however, Hyphy closely | |

| <u>1</u> <u>2</u> <u>3</u> <u>4</u> <u>5</u> <u>6</u> <u>7</u> <u>8</u> <u>9</u> <u>10</u> <u>11</u> <u>12</u> <u>13</u> <u>14</u> <u>15</u> <u>16</u> <u>17</u> <u>18</u> <u>19</u> <u>20</u> <u>21</u> <u>22</u> <u>23</u> <u>24</u> <u>25</u> <u>26</u> <u>27</u> <u>28</u> <u>Hyphy's Undisputed Material Facts</u> <u>and Supporting Evidence</u> | <u>Counter-Defendants' Response and</u> <u>Supporting Evidence</u> |
|--|---|
| <u>3</u> <u>4</u> <u>5</u> <u>6</u> <u>7</u> <u>8</u> <u>9</u> <u>10</u> <u>11</u> <u>12</u> <u>13</u> <u>14</u> <u>15</u> <u>16</u> <u>17</u> <u>18</u> <u>19</u> <u>20</u> <u>21</u> <u>22</u> <u>23</u> <u>24</u> <u>25</u> <u>26</u> <u>27</u> <u>28</u> <u>collaborated with the Group to</u> <u>create the Albums.</u> <u>Martinez Decl. at ¶ 8; Begakis Decl. at ¶</u> <u>8, Exhibit "N" thereto, Martinez Depo at</u> <u>75:6-76:25, 83:11-84:22, 84:24-85:8,</u> <u>85:14-86:16.</u> | |
| <u>8</u> <u>9</u> <u>10</u> <u>11</u> <u>12</u> <u>13</u> <u>14</u> <u>15</u> <u>16</u> <u>17</u> <u>18</u> <u>19</u> <u>20</u> <u>21</u> <u>22</u> <u>23</u> <u>24</u> <u>25</u> <u>26</u> <u>27</u> <u>28</u> <u>89. For the first three (of five) of the</u> <u>Los Originales Albums, Hyphy</u> <u>helped determine the "theme and</u> <u>overall creative direction of each</u> <u>Album.</u> <u>Martinez Decl. at ¶ 8.</u> | |
| <u>12</u> <u>13</u> <u>14</u> <u>15</u> <u>16</u> <u>17</u> <u>18</u> <u>19</u> <u>20</u> <u>21</u> <u>22</u> <u>23</u> <u>24</u> <u>25</u> <u>26</u> <u>27</u> <u>28</u> <u>90. For the first three (of five) of the</u> <u>Los Originales Albums, Hyphy</u> <u>crucially selected the songs to be</u> <u>included in each Album.</u> <u>Martinez Decl. at ¶ 8; Begakis Decl. at ¶</u> <u>8, Exhibit "N" thereto, Martinez Depo at</u> <u>83:11-84:22.</u> | |
| <u>18</u> <u>19</u> <u>20</u> <u>21</u> <u>22</u> <u>23</u> <u>24</u> <u>25</u> <u>26</u> <u>27</u> <u>28</u> <u>91. For the first three (of five) of the</u> <u>Los Originales Albums, Hyphy</u> <u>selected the recording studio, and</u> <u>paid for all costs associated with the</u> <u>recording of each Album.</u> <u>Martinez Decl. at ¶ 8.</u> | |
| <u>22</u> <u>23</u> <u>24</u> <u>25</u> <u>26</u> <u>27</u> <u>28</u> <u>92. For the first three (of five) of the</u> <u>Los Originales Albums, Hyphy</u> <u>hired the sound engineer.</u> <u>Martinez Decl. at ¶ 8; Begakis Decl. at ¶</u> <u>8, Exhibit "N" thereto, Martinez Depo at</u> <u>59:21-60:7, 61:10-16.</u> | |
| <u>27</u> <u>28</u> <u>93. For the first three (of five) of the</u> | |

| <p>1 <u>Hyphy's Undisputed Material Facts</u> 2 <u>and Supporting Evidence</u></p> | <p>1 <u>Counter-Defendants' Response and</u> 2 <u>Supporting Evidence</u></p> |
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| <p>3 Los Originales Albums, Hyphy paid 4 the Group a substantial amount to 5 record the Albums.</p> | |
| <p>5 Martinez Decl. at ¶ 8.</p> <p>6 94. For the first three (of five) of the 7 Los Originales Albums, Hyphy 8 oversaw and generally supervised 9 the recording and production of each Album.</p> | |
| <p>10 Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 11 8, Exhibit "N" thereto, Martinez Depo at 12 85:14-86:16.</p> | |
| <p>13 95. For the final two (of five) of the Los 14 Originales Albums, Hyphy also selected and paid for the venue of the live performance.</p> | |
| <p>15 Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 16 8, Exhibit "N" thereto, Martinez Depo at 17 75:6-25.</p> | |
| <p>18 96. For the final two (of five) of the Los 19 Originales Albums, Hyphy also selected the songs to be performed 20 at the live performance (which were recorded and subsequently include 21 in the Albums).</p> | |
| <p>22 Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 23 8, Exhibit "N" thereto, Martinez Depo at 24 75:6-25.</p> | |
| <p>25 97. For the final two (of five) of the Los 26 Originales Albums, Hyphy also directly employed, supervised, and 27 directed the services of the sound engineer and videographer who</p> | |

| <p>1 <u>Hyphy's Undisputed Material Facts</u> 2 <u>and Supporting Evidence</u></p> | <p>1 <u>Counter-Defendants' Response and</u> 2 <u>Supporting Evidence</u></p> |
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| <p>3 each recorded the audio and video 4 of the live performance.</p> <p>5 Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 6 8, Exhibit "N" thereto, Martinez Depo at 7 75:6-25.</p> | |
| <p>8 98. For the final two (of five) of the Los 9 Originales Albums, Hyphy also 10 wrote a script for the history of the 11 Group as presented as part of the 12 live performance, and hired an 13 "MC"/commentator who narrated 14 the script.</p> <p>15 Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 16 8, Exhibit "N" thereto, Martinez Depo at 17 75:6-25.</p> | |
| <p>18 99. For the final two (of five) of the Los 19 Originales Albums, Hyphy also re- 20 recorded portions of the guitarist's 21 contributions to the live 22 performance afterwards, using a 23 new guitarist selected, hired and 24 paid for by Hyphy.</p> <p>25 Martinez Decl. at ¶ 8; Begakis Decl. at ¶ 26 8, Exhibit "N" thereto, Martinez Depo at 27 75:6-25.</p> | |
| <p>28 100. It should also be noted here that 29 Flores and Vargas were plainly joint 30 authors of the Albums because they 31 were equally involved in all 32 activities of the Band, which existed 33 as an unincorporated partnership in 34 which all Band members were joint 35 owners, participants and 36 contributors.</p> | |

| <u>1</u> <u>2</u> <u>3</u> <u>4</u> <u>5</u> <u>6</u> <u>7</u> <u>8</u> <u>9</u> <u>10</u> <u>11</u> <u>12</u> <u>13</u> <u>14</u> <u>15</u> <u>16</u> <u>17</u> <u>18</u> <u>19</u> <u>20</u> <u>21</u> <u>22</u> <u>23</u> <u>24</u> <u>25</u> <u>26</u> <u>27</u> <u>28</u> <u>Hyphy's Undisputed Material Facts and Supporting Evidence</u> | <u>1</u> <u>2</u> <u>3</u> <u>4</u> <u>5</u> <u>6</u> <u>7</u> <u>8</u> <u>9</u> <u>10</u> <u>11</u> <u>12</u> <u>13</u> <u>14</u> <u>15</u> <u>16</u> <u>17</u> <u>18</u> <u>19</u> <u>20</u> <u>21</u> <u>22</u> <u>23</u> <u>24</u> <u>25</u> <u>26</u> <u>27</u> <u>28</u> <u>Counter-Defendants' Response and Supporting Evidence</u> |
|---|--|
| <p>Begakis Decl. at ¶ 11, Exhibit "Q" thereto, Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 12, Exhibit "R" thereto, Flores Depo at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21; Begakis Decl. at ¶ 13, Exhibit "S" thereto, Chavez Depo I at 18:23-19:3.</p> | |
| <p>101. It should also be noted here that Flores and Vargas were plainly joint authors of the Albums because they were equally credited on all Albums in which each of them made contributions.</p> | |
| <p><i>See</i> Begakis Decl. at ¶ 11, Exhibit "Q" thereto, Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 12, Exhibit "R" thereto, Flores Depo at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21.</p> | |
| <p>102. It should also be noted here that Flores and Vargas were plainly joint authors of the Albums because they shared equally in all profits of the Band, and were granted equal access to inspect all records related to the Band's receipt of all such profits.</p> | |
| <p>Begakis Decl. at ¶ 11, Exhibit "Q" thereto, Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 12, Exhibit</p> | |

| <p>1 <u>Hyphy's Undisputed Material Facts</u> 2 <u>and Supporting Evidence</u></p> | <p>1 <u>Counter-Defendants' Response and</u> 2 <u>Supporting Evidence</u></p> |
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| <p>3 “R” thereto, Flores Depo at 47:15-25, 4 82:13-15, 82:22-83:2, 83:4-13, 85:25- 5 86:11, 86:13-21; Begakis Decl. at ¶ 14, 6 Exhibit “T” thereto, Chavez Depo II at 20:20-21:16, 26:13-20, 31:8-16, 33:18- 34:1, 38:8-18, 41:13-42:2.</p> | |
| <p>7 103. Indeed, Flores and Vargas’s co- 8 equal status in the Group is how the 9 Group is known to the public 10 because, for example, none of the 11 individual members of the Group – 12 including Chavez – are individually 13 identified on the Group’s 14 “biography” page located at the 15 website 16 <https://www.AllMusic.com> (the 17 “Website”). Furthermore, the 18 Group’s “credits” page on the 19 Website indicates that the credited 20 “Artist” on all albums produced by 21 the Group is “Los Originales De 22 San Juan.”</p> | |
| <p>23 Martinez Decl. at ¶ 18.</p> | |
| <p>24 104. In addition to its original creative 25 contributions to the production, 26 recording and overall creation of the 27 Los Originales Albums, Hyphy also designed and created the artwork featured on the cover of each Album (the “Album Artwork”).</p> | |
| <p>28 Martinez Decl. at ¶ 9; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 127:12-21.</p> | |
| <p>29 105. Hyphy released the Albums, with 30 the Album Artwork, for distribution</p> | |

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| <p>through all available digital service providers (“DSPs”) between 2013 and 2017.</p> <p>Martinez Decl. at ¶ 13, Exhibit “H” thereto; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 44:7-23; 51:18-25; 67:24-69:5.</p> | |
| <p>106. Thereafter, Hyphy obtained copyright registrations for all of such Album Artwork.</p> <p>Martinez Decl. at ¶ 14, Exhibit “X” thereto; Begakis Decl. at ¶ 8, Exhibit “N” thereto, Martinez Depo at 133:9-136:5.</p> | |
| <p>107. Plaintiff/Counter-Defendant Yellowcake, Inc. (“Yellowcake”) is a competing record label and distributor of sound recordings, utilizing Counter-Defendant Colonize Media, Inc. (“Colonize”) as its “distribution arm” to release and exploit rights acquired by Yellowcake.</p> | |
| <p>Begakis Decl. at ¶ 9, Exhibit “O” thereto, Deposition Transcript of Kevin Berger (“Berger Depo”) at 91:19-23; Begakis Decl. at ¶ 10, Exhibit “P” thereto, Deposition Transcript of Jose David Hernandez, Volume I (“Hernandez Depo I”) at 77:19-21.</p> | |
| <p>108. Counter-Defendant Jose David Hernandez (“Hernandez”) is a co-owner of both Yellowcake and Colonize.</p> | |

| <u>1</u> <u>Hyphy's Undisputed Material Facts</u> <u>2</u> <u>and Supporting Evidence</u> | <u>Counter-Defendants' Response and</u> <u>Supporting Evidence</u> |
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| <p>3 Begakis Decl. at ¶ 10, Exhibit "P" 4 thereto, Hernandez Depo I at 51:9-11, 5 116:18-117:14, 148:24-149:5; Begakis 6 Decl. at ¶ 14, Exhibit "T" thereto, 7 Chavez Depo II at 77:13-17, 79:7-9, 79:17-80:2, 81:7-16.</p> | |
| <p>7 109. In that position, Hernandez has 8 admitted that both corporations 9 have operated – and continue to 10 operate – as a single economic 11 entity, with common ownership, 12 business operations, office space, 13 staff, and many other resources.</p> | |
| <p>13 Begakis Decl. at ¶ 10, Exhibit "P" 14 thereto, Hernandez Depo I at 80:3-20.</p> | |
| <p>14 110. In or about March 2019, Hernandez 15 approached Chavez about selling 16 the Los Originales Albums to 17 Yellowcake.</p> | |
| <p>17 Begakis Decl. at ¶ 10, Exhibit "P" 18 thereto, Hernandez Depo I at 51:9-11, 19 116:18-117:14, 148:24-149:5; Begakis 20 Decl. at ¶ 14, Exhibit "T" thereto, 21 Chavez Depo II at 77:13-17, 79:7-9, 22 79:17-80:2, 81:7-16.</p> | |
| <p>22 111. Hernandez had previously worked 23 with Hyphy and had secretly gained 24 valuable information on Hyphy's 25 business and relationship with 26 Chavez.</p> | |
| <p>26 Martinez Decl. at ¶ 5; Begakis Decl. at ¶ 27 8, Exhibit "N" thereto, Martinez Depo at 26:2-12.</p> | |

| <u>Hyphy's Undisputed Material Facts and Supporting Evidence</u> | <u>Counter-Defendants' Response and Supporting Evidence</u> |
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| <p>112. Hernandez thus knew that Hyphy 2 only had an oral agreement with the 3 Group, and approached and 4 convinced Chavez, without Hyphy 5 or the rest of the Group's 6 knowledge, to assign the Albums to 7 Yellowcake in exchange for payment of \$500,000.</p> <p>8 Martinez Decl. at ¶ 5; Begakis Decl. at ¶ 9 8, Exhibit "N" thereto, Martinez Depo at 0 26:2-12; Begakis Decl. at ¶ 14, Exhibit 1 "T" thereto, Chavez Depo II at 77:13-17, 2 79:7-9, 79:17-80:2, 80:5-13, 81:7-16; 3 Begakis Decl. at ¶ 10, Exhibit "P" thereto, Hernandez Depo I at 107:4-20.</p> | |
| <p>113. Chavez and Yellowcake attempted 4 to codify their purported agreement 5 via an "Asset Purchase and 6 Assignment Agreement" executed 7 on or about March 21, 2019 (the "Asset Purchase Agreement").</p> <p>8 Begakis Decl. at ¶ 7, Exhibit "M" 9 thereto, Plaintiff/Counter-Defendant's 0 Document Production (PLF000021- PLF000039).</p> | |
| <p>114. In Section 13.e. of the Asset 1 Purchase Agreement, Chavez 2 represented and warranted to 3 Yellowcake that Chavez was "the 4 only owner of" the Albums, and 5 possessed "good and marketable title" thereto at the time of sale.</p> <p>6 Begakis Decl. at ¶ 7, Exhibit "M" 7 thereto, Plaintiff/Counter-Defendant's</p> | |

| <u>Hyphy's Undisputed Material Facts and Supporting Evidence</u> | <u>Counter-Defendants' Response and Supporting Evidence</u> |
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| Document Production (PLF00024). | |
| 115. Chavez never obtained signed written agreements from Flores, Vargas or Hyphy acquiring each party's respective contributions to, and rights in, the Albums and sound recordings embodied thereon. | |
| Begakis Decl. at ¶ 6, Exhibit "L" thereto, Yellowcake Interrogatory Responses at pp. 4-5; Begakis Decl. at ¶ 7, Exhibit "M" thereto, Yellowcake Responses to Request for Production at p. 4. | |
| 116. Based on musical contributions alone, Flores and Vargas contributed <i>more</i> to the creation of the Albums than Chavez (who only sang) because they performed the accordion and drums, which are musical elements that are critical to the particular genre of music at issue (especially the accordion). | |
| Martinez Decl. at ¶ 4. | |
| 117. Chavez repeatedly acknowledged Flores and Vargas' valuable contributions to the Albums, which were, in fact, so valuable to Chavez, that Chavez paid Flores royalties for his "[y]ears working for the band," and paid Vargas following Chavez's re-sale of the Works to Yellowcake because "[Vargas] was a good musician..." | |
| Martinez Decl. at ¶ 4. | |
| 118. Counter-Defendants entirely failed | |

| <p>1 <u>Hyphy's Undisputed Material Facts</u> 2 <u>and Supporting Evidence</u></p> | <p>1 <u>Counter-Defendants' Response and</u> 2 <u>Supporting Evidence</u></p> |
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| <p>3 to serve any Initial Disclosures, and 4 the discovery cut-off date has come and gone.</p> | |
| <p>5 Begakis Decl. at ¶ 3.</p> <p>6 119. Yellowcake thus failed to identify 7 any damages beyond the mere 8 categories of damages set out in the Complaint.</p> | |
| <p>9 Begakis Decl. at ¶ 4-5.</p> <p>10 120. Hyphy incurred approximately 11 \$124,700 in verifiable costs, but 12 only generated approximately 13 \$104,131 in verifiable revenue – 14 establishing that Hyphy has taken a loss of \$20,569 on the Albums.</p> | |
| <p>15 Martinez Decl. at ¶ 10-12.</p> <p>16 121. Hyphy's expert referred to UPC 17 numbers as "digital social security numbers for products.</p> | |
| <p>18 Begakis Decl. at ¶ 15, Exhibit "U" 19 thereto, Deposition Transcript of 20 Lawrence H. Katz, Esq. ("Katz Depo") at 46:1-47:4, 46:23-47:4, 47:5-18.</p> | |
| <p>21 122. Eduardo Leon, the principal of 22 Morena Music, flatly denies every 23 accusation Counter-Defendants 24 have improperly and untowardly lobbed at Morena Music.</p> <p>25 Declaration of Eduardo Leon ("Leon Decl.") at ¶ 2-6.</p> | |
| <p>26 123. It must also be pointed out that 27 Hyphy and non-party Morena</p> | |

| <p>1 <u>Hyphy's Undisputed Material Facts</u> 2 <u>and Supporting Evidence</u></p> | <p>1 <u>Counter-Defendants' Response and</u> 2 <u>Supporting Evidence</u></p> |
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| <p>3 Music are competitors, who have no 4 working relationship, other than that 5 both have been targeted by the 6 copyright trolls at Yellowcake.</p> | |
| <p>6 Martinez Decl. at ¶ 19; Leon Decl. at ¶ 4 7 124. Mr. Hernandez has already lied 8 under oath by claiming that 9 Counter-Defendants would never 10 distribute the Albums with Hyphy's 11 Album Artwork, even though 12 Hyphy has proven that they have. 13 Begakis Decl. at ¶ 10, Exhibit "P" 14 thereto, Hernandez Depo I at 211:24- 15 212:6.</p> | |

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15
16 DATED: August 15, 2023

17 **ALTVIEW LAW GROUP, LLP**

18 By: 
19 JOHN M. BEGAKIS
20 Attorneys for Defendant/Counterclaimant
21 HYPHY MUSIC, INC., a California
22 corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing electronically filed document has been served via a "Notice of Electronic Filing" automatically generated by the CM/ECF System and sent by e-mail to all attorneys in the case who are registered as CM/ECF users and have consented to electronic service pursuant to L.R. 5-3.3.

Dated: August 15, 2023

By: /s/ John Begakis
John M. Begakis